

PAWNSHOP TRANSACTION INFORMATION

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Pawnshop Transaction Information Act to include secondhand merchandise dealers.

Highlighted Provisions:

This bill:

- ▶ defines secondhand merchandise dealers;
- ▶ requires that secondhand merchandise dealers comply with all transaction identification, recordkeeping, reporting, training, and other provisions that apply to pawnbrokers, with the exception of regulation of pawn tickets; and
- ▶ requires that secondhand merchandise dealers provide data to the online database currently used by pawnbrokers.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-32a-101, as enacted by Chapter 299, Laws of Utah 2004

13-32a-102, as last amended by Chapter 290, Laws of Utah 2006



- 28 **13-32a-103**, as last amended by Chapter 290, Laws of Utah 2006
- 29 **13-32a-104**, as enacted by Chapter 299, Laws of Utah 2004
- 30 **13-32a-105**, as enacted by Chapter 299, Laws of Utah 2004
- 31 **13-32a-106**, as last amended by Chapter 256, Laws of Utah 2005
- 32 **13-32a-107**, as last amended by Chapter 256, Laws of Utah 2005
- 33 **13-32a-108**, as enacted by Chapter 299, Laws of Utah 2004
- 34 **13-32a-109**, as last amended by Chapter 290, Laws of Utah 2006
- 35 **13-32a-109.8**, as enacted by Chapter 290, Laws of Utah 2006
- 36 **13-32a-112**, as last amended by Chapter 256, Laws of Utah 2005
- 37 **13-32a-114**, as last amended by Chapter 256, Laws of Utah 2005
- 38 **63-2-304**, as last amended by Chapters 14, 174 and 261, Laws of Utah 2006

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **13-32a-101** is amended to read:

42 **CHAPTER 32a. PAWNSHOP AND SECONDHAND MERCHANDISE**
43 **TRANSACTION INFORMATION ACT**

44 **13-32a-101. Title.**

45 This chapter is known as the "Pawnshop and Secondhand Merchandise Transaction
46 Information Act."

47 Section 2. Section **13-32a-102** is amended to read:

48 **13-32a-102. Definitions.**

49 As used in this chapter:

50 (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations
51 Restricted Account created in Section 13-32a-113.

52 (2) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board
53 created by this chapter.

54 (3) "Central database" or "database" means the electronic database created and
55 operated under Section 13-32a-105.

56 (4) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
57 Department of Commerce.

58 (5) "Identification" means a form of positive identification issued by a governmental

59 entity that:

60 (a) contains a numerical identifier and a photograph of the person identified; and

61 (b) may include a state identification card, a state drivers license, a United States
62 military identification card, or a United States passport.

63 (6) "Local law enforcement agency" means the law enforcement agency that has direct
64 responsibility for ensuring compliance with central database reporting requirements for the
65 jurisdiction where the pawnshop is located.

66 (7) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or
67 otherwise appropriated without authority of the lawful owner.

68 (8) "Original victim" means a victim who is not a party to the pawn transaction.

69 (9) "Pawnbroker" means a person whose business engages in the following activities:

70 (a) loans money on one or more deposits of personal property;

71 (b) deals in the purchase, exchange, or possession of personal property on condition of
72 selling the same property back again to the pledgor or depositor;

73 (c) loans or advances money on personal property by taking chattel mortgage security
74 on the property and takes or receives the personal property into his possession, and who sells
75 the unredeemed pledges; or

76 (d) engages in a licensed business enterprise as a pawnshop.

77 (10) "Pawn and secondhand business" means any business operated by a pawnbroker
78 or secondhand merchandise dealer or the owner or operator of the business.

79 [~~(10)~~] (11) "Pawn ticket" means a document upon which information regarding a pawn
80 transaction is entered when the pawn transaction is made.

81 [~~(11)~~] (12) "Pawn transaction" means an extension of credit in which an individual
82 delivers property to a pawnbroker for an advance of money and retains the right to redeem the
83 property for the redemption price within a fixed period of time.

84 [~~(12)~~] (13) "Pawnshop" means the physical location or premises where a pawnbroker
85 conducts business.

86 [~~(13)~~] (14) "Pledgor" means a person who conducts a pawn transaction with a
87 pawnshop.

88 [~~(14)~~] (15) "Property" means any tangible personal property.

89 [~~(15)~~] (16) "Register" means the record of information required under this chapter to be

90 maintained by [~~the pawnbroker~~] pawn and secondhand businesses. The register is an electronic
91 record that is in a format that is compatible with the central database.

92 (17) "Secondhand merchandise dealer" means an owner or operator of a business that:

93 (a) deals in the purchase, exchange, or sale of used or secondhand merchandise or
94 personal property; and

95 (b) does not function as a pawnbroker.

96 Section 3. Section **13-32a-103** is amended to read:

97 **13-32a-103. Compliance with criminal code and this chapter.**

98 Every [~~pawnbroker~~] pawn or secondhand business shall, regarding each article of
99 property a person pawns or sells, comply with the requirements of this chapter and the
100 requirements of Subsections 76-6-408(2)(c)(i) through (iii) regarding the person's:

- 101 (1) legal right to the property;
- 102 (2) fingerprint; and
- 103 (3) picture identification.

104 Section 4. Section **13-32a-104** is amended to read:

105 **13-32a-104. Register required to be maintained -- Contents -- Identification of**
106 **items.**

107 (1) Every pawnbroker or secondhand merchandise dealer shall keep a register of pawn
108 and sale transactions, in which the [~~pawnbroker~~] pawn or secondhand business owner or his
109 employee shall enter the following information regarding every article pawned or sold to [~~him~~]
110 the owner or employee:

- 111 (a) the date and time of the transaction;
- 112 (b) the pawn transaction ticket number, if the article is pawned;
- 113 (c) the date by which the article must be redeemed;
- 114 (d) the following information regarding the person who pawns or sells the article:
 - 115 (i) the person's name, residence address, and date of birth;
 - 116 (ii) the number of the driver license or other form of positive identification presented
117 by the person, and notations of discrepancies if the person's physical description, including
118 gender, height, weight, race, age, hair color, and eye color, does not correspond with
119 identification provided by the person;
 - 120 (iii) the person's signature; and

121 (iv) a legible fingerprint of the person's right thumb, or if the right thumb cannot be
 122 fingerprinted, a legible fingerprint of the person with a written notation identifying the
 123 fingerprint and the reason why the thumb print was unavailable;

124 (e) the amount loaned on or paid for the article, or the article for which it was traded;

125 (f) the identification of the ~~[pawnbroker]~~ pawn or secondhand business owner or ~~[his]~~
 126 the employee, whoever is making the register entry; and

127 (g) an accurate description of the article of property, including available identifying
 128 marks such as:

129 (i) names, brand names, numbers, serial numbers, model numbers, color,
 130 manufacturers' names, and size;

131 (ii) metallic composition, and any jewels, stones, or glass;

132 (iii) any other marks of identification or indicia of ownership on the article;

133 (iv) the weight of the article, if the payment is based on weight;

134 (v) any other unique identifying feature;

135 (vi) gold content, if indicated; and

136 (vii) if multiple articles of a similar nature are delivered together in one transaction and
 137 the articles do not bear serial or model numbers and do not include precious metals or
 138 gemstones, such as musical or video recordings, books, or hand tools, the description of the
 139 articles is adequate if it includes the quantity of the articles and a description of the type of
 140 articles delivered.

141 (2) A pawnshop pawn or secondhand business may not accept any personal property if,
 142 upon inspection, it is apparent that serial numbers, model names, or identifying characteristics
 143 have been intentionally defaced on that article of property.

144 Section 5. Section **13-32a-105** is amended to read:

145 **13-32a-105. Central database.**

146 (1) There is created under this section a central database as a statewide repository for
 147 all information ~~[pawnbrokers]~~ pawn and secondhand businesses are required to submit in
 148 accordance with this chapter and for the use of all participating law enforcement agencies
 149 whose jurisdictions include one or more ~~[pawnshops]~~ pawn or secondhand businesses.

150 (2) The Division of Purchasing and General Services created in Title 63A, Chapter 2,
 151 shall:

152 (a) meet with the board to determine the required elements of the database; and
153 (b) conduct a statewide request for proposal for the creation of and maintenance of the
154 central database.

155 (3) Funding for the creation and operation of the central database shall be from the
156 account.

157 (4) (a) Any entity submitting a bid to create, maintain, and operate the database
158 pursuant to the request for proposal conducted by the Division of Purchasing and General
159 Services may not hold any financial or operating interest in any pawnshop in any state.

160 (b) The Division of Purchasing and General Services, in conjunction with the
161 Pawnshop and Secondhand Merchandise Advisory Board, shall verify before a bid is awarded
162 that the selected entity meets the requirements of Subsection (4)(a).

163 (c) If any entity is awarded a bid under this Subsection (4) and is later found to hold
164 any interest in violation of Subsection (4)(a), the award is subject to being opened again for
165 request for proposal.

166 (5) Information entered in the database shall be retained for five years and shall then be
167 deleted.

168 Section 6. Section **13-32a-106** is amended to read:

169 **13-32a-106. Transaction information provided to the central database --**
170 **Protected information.**

171 (1) The information required to be recorded under Sections 13-32a-103 and
172 13-32a-104 that is capable of being transmitted electronically shall be transmitted
173 electronically to the central database on the next business day following the transaction.

174 (2) The pawnbroker shall maintain all pawn tickets generated by the pawnshop and
175 shall maintain the tickets in a manner so that the tickets are available to local law enforcement
176 agencies as required by this chapter and as requested by any law enforcement agency as part of
177 an investigation or reasonable random inspection conducted pursuant to this chapter.

178 (3) (a) If a [~~pawnshop~~] pawn or secondhand business experiences a computer or
179 electronic malfunction that affects its ability to report transactions as required in Subsection
180 (1), the [~~pawnshop~~] pawn or secondhand business shall immediately notify the local law
181 enforcement agency of the malfunction.

182 (b) The [~~pawnshop~~] pawn or secondhand business shall solve the malfunction within

183 three business days or notify law enforcement under Subsection (4).

184 (4) If the computer or electronic malfunction under Subsection (3) cannot be solved
 185 within three business days, the ~~[pawnshop]~~ pawn or secondhand business shall notify the local
 186 law enforcement agency of the reasons for the delay and provide documentation from a
 187 reputable computer maintenance company of the reasons why the computer or electronic
 188 malfunction cannot be solved within three business days.

189 (5) A computer or electronic malfunction does not suspend the ~~[pawnshop's]~~ pawn or
 190 secondhand business' obligation to comply with all other provisions of this chapter.

191 (6) During the malfunction under Subsections (3) and (4), the ~~[pawnshop]~~ pawn or
 192 secondhand business shall:

193 ~~[(a) maintain the pawn tickets and other information required under this chapter in a~~
 194 ~~written form; and]~~

195 ~~[(b)]~~ (a) arrange with the local law enforcement agency a mutually acceptable
 196 alternative method by which the ~~[pawnshop]~~ pawn or secondhand business provides the
 197 required information to the local law enforcement official[-]; and

198 (b) a pawnshop shall maintain the pawn tickets and other related information required
 199 under this chapter in a written form.

200 (7) A ~~[pawnshop]~~ pawn or secondhand business that violates the electronic transaction
 201 reporting requirement of this section is subject to an administrative fine of \$50 per day if:

202 (a) the ~~[pawnshop]~~ pawn or secondhand business is unable to submit the information
 203 electronically due to a computer or electronic malfunction;

204 (b) the three business day period under Subsection (3) has expired; and

205 (c) the ~~[pawnshop]~~ pawn or secondhand business has not provided documentation
 206 regarding its inability to solve the malfunction as required under Subsection (4).

207 (8) A ~~[pawnshop]~~ pawn or secondhand business is not responsible for a delay in
 208 transmission of information that results from a malfunction in the central database.

209 Section 7. Section **13-32a-107** is amended to read:

210 **13-32a-107. Deadline for registers to be electronic -- Notice for updating.**

211 (1) On and after January 1, 2005, each ~~[pawnbroker]~~ pawn and secondhand business in
 212 the state that generates ten or more pawn transactions per month or 50 or more sales
 213 transactions per month shall maintain the register in an electronic format that is compatible

214 with the central database computer system.

215 (2) (a) On and after January 15, 2005, [~~pawnbrokers~~] pawn and secondhand businesses
216 under Subsection (1) are subject to an administrative fine of \$50 a day for each daily report
217 required under Section 13-32a-106 that is submitted as a written report rather than
218 electronically.

219 (b) Fines imposed under this section shall be paid to the division, which shall deposit
220 the fines in the account.

221 (3) The operators of the central database shall establish written procedures in
222 conjunction with the Pawnshop and Secondhand Merchandise Advisory Board to ensure that
223 when the central database is upgraded, the affected [~~pawnbrokers~~] pawn and secondhand
224 businesses will receive adequate notice, information, and time to upgrade their computer
225 systems so the systems are compatible with the upgraded central database.

226 Section 8. Section **13-32a-108** is amended to read:

227 **13-32a-108. Retention of records -- Reasonable inspection.**

228 (1) The pawnbroker or law enforcement agency, whichever has custody of pawn
229 tickets, shall retain them for no less than three years from the date of the transaction.

230 (2) (a) A law enforcement agency may conduct random reasonable inspections of
231 [~~pawnshops~~] pawn or secondhand businesses for the purpose of monitoring compliance with
232 the reporting requirements of this chapter. The inspections may be conducted to:

233 (i) confirm that pawned items match the description reported to the database by the
234 pawnshop; and

235 (ii) make spot checks of property at the [~~pawnshop~~] pawn or secondhand business to
236 determine if the property is appropriately reported.

237 (b) Inspections under Subsection (2)(a) shall be performed during the regular business
238 hours of the [~~pawnshop~~] pawn or secondhand business.

239 Section 9. Section **13-32a-109** is amended to read:

240 **13-32a-109. Holding period for pawned articles.**

241 (1) (a) The pawnbroker may sell any article pawned to him:

242 (i) after the expiration of the contract period between the pawnbroker and the pledgor;
243 and

244 (ii) if the pawnbroker has complied with the requirements of Section 13-32a-106

245 regarding reporting to the central database and Section 13-32a-103.

246 (b) If an article is purchased by the ~~[pawnbroker]~~ pawn or secondhand business, the
247 ~~[pawnbroker]~~ pawn or secondhand business may sell the article after the ~~[pawnbroker]~~ pawn or
248 secondhand business has held the article for ten days and complied with the requirements of
249 Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103.

250 (c) This Subsection (1) does not preclude a law enforcement agency from requiring a
251 ~~[pawnbroker]~~ pawn or secondhand business to hold an article if necessary in the course of an
252 investigation.

253 (i) If the article was pawned, the law enforcement agency may require the article be
254 held beyond the terms of the contract between the pledgor and the pawn broker.

255 (ii) If the article was sold to the ~~[pawnbroker]~~ pawn or secondhand business, the law
256 enforcement agency may require the article be held if the ~~[pawnbroker]~~ pawn or secondhand
257 business has not sold the article.

258 (d) If the law enforcement agency requesting a hold on property under this Subsection
259 (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify
260 the local law enforcement agency of the request and also the ~~[pawnshop]~~ pawn or secondhand
261 business.

262 (2) If a law enforcement agency requires the ~~[pawnbroker]~~ pawn or secondhand
263 business to hold an article as part of an investigation, the agency shall provide to the
264 ~~[pawnbroker]~~ pawn or secondhand business a hold ticket issued by the agency, which:

265 (a) states the active case number;

266 (b) confirms the date of the hold request and the article to be held; and

267 (c) facilitates the ~~[pawnbroker's ability]~~ ability of the pawn or secondhand business to
268 track the article when the prosecution takes over the case.

269 (3) If an article is not seized by a law enforcement agency that has placed a hold on the
270 property, the property may remain in the custody of the ~~[pawnbroker]~~ pawn or secondhand
271 business until further disposition by the law enforcement agency, and as consistent with this
272 chapter.

273 (4) The initial hold by a law enforcement agency is for a period of 45 days. If the
274 article is not seized by the law enforcement agency, the article shall remain in the custody of
275 the ~~[pawnshop]~~ pawn or secondhand business and is subject to the hold unless exigent

276 circumstances require the purchased or pawned article to be seized by the law enforcement
277 agency.

278 (5) (a) A law enforcement agency may extend any hold for up to an additional 45 days
279 when exigent circumstances require the extension.

280 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law
281 enforcement agency shall notify the [pawnshop] pawn or secondhand business that is subject to
282 the hold prior to the expiration of the initial 45 days.

283 (c) A law enforcement agency may not hold an item for more than the 90 days allowed
284 under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

285 (6) A hold on an article under Subsection (2) takes precedence over any request to
286 claim or purchase the article subject to the hold.

287 (7) When the purpose for the hold on or seizure of an article is terminated, the law
288 enforcement agency requiring the hold or seizure shall within 15 days after the termination:

289 (a) notify the [pawnshop] pawn or secondhand business in writing that the hold or
290 seizure has been terminated;

291 (b) return the article subject to the seizure to the [pawnbroker] pawn or secondhand
292 business; or

293 (c) if the article is not returned to the [pawnbroker] pawn or secondhand business,
294 advise the [pawnbroker] pawn or secondhand business either in writing or electronically of the
295 specific alternative disposition of the article.

296 Section 10. Section **13-32a-109.8** is amended to read:

297 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

298 (1) If the article pawned or sold under Section 13-32a-109 is subject to an investigation
299 and a criminal prosecution results, the prosecuting agency shall, prior to disposition of the case:

300 (a) request restitution to the [pawnbroker] pawn or secondhand business for the crimes
301 perpetrated against the [pawnshop] pawn or secondhand business as a victim of theft by
302 deception; and

303 (b) request restitution for the original victim.

304 (2) If the original victim of the theft of the property files a police report and the
305 property is subsequently located at a [pawnshop] pawn or secondhand business, the victim
306 must fully cooperate with the prosecution of the crimes perpetrated against the [pawnshop]

307 pawn or secondhand business as a victim of theft by deception, in order to qualify for
308 restitution regarding the property.

309 (3) If the original victim does not pursue criminal charges or does not cooperate in the
310 prosecution of the property theft crimes charged against the defendant and the theft by
311 deception charges committed against the [~~pawnshop~~] pawn or secondhand business, then the
312 original victim must pay to the [~~pawnshop~~] pawn or secondhand business the amount of money
313 financed or paid by the [~~pawnshop~~] pawn or secondhand business to the defendant in order to
314 obtain the property.

315 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
316 prosecution of the theft by deception offense committed against the [~~pawnshop~~] pawn or
317 secondhand business suspends the requirements of Subsections (2) and (3).

318 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
319 defendants are convicted, the prosecuting agency shall direct the [~~pawnshop~~] pawn or
320 secondhand business to turn over the property to the victim.

321 (c) Upon receipt of notice from the prosecuting agency that the property must be turned
322 over to the victim, the [~~pawnshop~~] pawn or secondhand business shall return the property to the
323 victim as soon as reasonably possible.

324 (5) A [~~pawnshop~~] pawn or secondhand business must fully cooperate in the
325 prosecution of the property crimes committed against the original victim and the property
326 crime of theft by deception committed against the [~~pawnshop~~] pawn or secondhand business in
327 order to participate in any court-ordered restitution.

328 (6) At all times during the course of a criminal investigation and subsequent
329 prosecution, the article subject to a law enforcement hold shall be kept secure by the
330 [~~pawnshop~~] pawn or secondhand business subject to the hold unless ~~the~~ a pawned article has
331 been seized by the law enforcement agency pursuant to Section 13-32a-109.5.

332 Section 11. Section **13-32a-112** is amended to read:

333 **13-32a-112. Pawnshop or Secondhand Merchandise Advisory Board --**
334 **Membership -- Duties -- Provide training -- Records of compliance.**

335 (1) There is created within the division the Pawnshop and Secondhand Merchandise
336 Advisory Board. The board consists of ~~ten~~ 11 voting members and one nonvoting member:

337 (a) one representative of the Utah Chiefs of Police Association;

- 338 (b) one representative of the Utah Sheriffs Association;
- 339 (c) one representative of the Statewide Association of Prosecutors;
- 340 (d) [~~five~~] three representatives from the pawnshop industry and three representatives
341 from the secondhand merchandise business industry, who are all appointed by the director of
342 the Utah Commission on Criminal and Juvenile Justice (CCJJ) and who represent [~~five~~] three
343 separate pawnshops, and three separate secondhand merchandise dealers, each of which are
344 owned by a separate person or entity;
- 345 (e) one law enforcement officer who is appointed by the board members under
346 Subsections (1)(a) through (d);
- 347 (f) one law enforcement officer whose work regularly involves [~~pawnshops~~] pawn and
348 secondhand businesses and who is appointed by the board members under Subsections (1)(a)
349 through (d); and
- 350 (g) one representative from the central database, who is nonvoting.
- 351 (2) (a) The board shall elect one voting member as the chair of the board by a majority
352 of the members present at the board's first meeting each year.
- 353 (b) The chair shall preside over the board for a period of one year.
- 354 (c) The advisory board shall meet quarterly upon the call of the chair.
- 355 (3) (a) The board shall conduct quarterly training sessions regarding compliance with
356 this chapter and other applicable state laws for any person [~~defined as a pawnbroker~~] who owns
357 or is employed by a pawn or secondhand business in this chapter.
- 358 (b) Each training session shall provide not fewer than two hours of training.
- 359 (4) (a) Each [~~pawnbroker~~] pawn or secondhand business in operation as of January 1
360 shall ensure one or more persons employed by the [~~pawnshop~~] pawn or secondhand business
361 each participate in no fewer than four hours of compliance training within that year.
- 362 (b) This requirement does not limit the number of employees, directors, or officers of a
363 [~~pawnshop~~] pawn or secondhand business who attend the compliance training.
- 364 (5) The board shall monitor and keep a record of the hours of compliance training
365 accrued by each [~~pawnshop~~] pawn or secondhand business.
- 366 (6) The board shall provide each [~~pawnshop~~] pawn or secondhand business with a
367 certificate of compliance upon completion by an employee of the four hours of compliance
368 training.

369 (7) (a) Each law enforcement agency that has a [~~pawnshop~~] pawn or secondhand
370 business located within its jurisdiction shall ensure that at least one of its officers completes
371 four hours of compliance training yearly.

372 (b) This requirement does not limit the number of law enforcement officers who attend
373 the compliance training.

374 Section 12. Section **13-32a-114** is amended to read:

375 **13-32a-114. Preemption of local ordinances -- Exceptions.**

376 (1) This chapter preempts all city, county, and other local ordinances governing
377 [~~pawnshops, pawnbrokers,~~] pawn or secondhand businesses and pawnbroking transactions, if
378 the ordinances are more restrictive than the provisions of this chapter or are not consistent with
379 this chapter.

380 (2) Subsection (1) does not preclude a city, county, or other local governmental unit
381 from:

382 (a) enacting or enforcing local ordinances concerning public health, safety, or welfare,
383 if the ordinances are uniform and equal in application to [~~pawnshops and pawnbrokers~~] pawn
384 and secondhand businesses and other retail businesses or activities;

385 (b) requiring a [~~pawnshop or pawnbroker~~] pawn or secondhand business to obtain and
386 maintain a business license; and

387 (c) enacting zoning ordinances that restrict areas where [~~pawnshops~~] pawn or
388 secondhand businesses and other retail businesses or activities can be located.

389 Section 13. Section **63-2-304** is amended to read:

390 **63-2-304. Protected records.**

391 The following records are protected if properly classified by a governmental entity:

392 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
393 has provided the governmental entity with the information specified in Section 63-2-308;

394 (2) commercial information or nonindividual financial information obtained from a
395 person if:

396 (a) disclosure of the information could reasonably be expected to result in unfair
397 competitive injury to the person submitting the information or would impair the ability of the
398 governmental entity to obtain necessary information in the future;

399 (b) the person submitting the information has a greater interest in prohibiting access

400 than the public in obtaining access; and

401 (c) the person submitting the information has provided the governmental entity with
402 the information specified in Section 63-2-308;

403 (3) commercial or financial information acquired or prepared by a governmental entity
404 to the extent that disclosure would lead to financial speculations in currencies, securities, or
405 commodities that will interfere with a planned transaction by the governmental entity or cause
406 substantial financial injury to the governmental entity or state economy;

407 (4) records the disclosure of which could cause commercial injury to, or confer a
408 competitive advantage upon a potential or actual competitor of, a commercial project entity as
409 defined in Subsection 11-13-103(4);

410 (5) test questions and answers to be used in future license, certification, registration,
411 employment, or academic examinations;

412 (6) records the disclosure of which would impair governmental procurement
413 proceedings or give an unfair advantage to any person proposing to enter into a contract or
414 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
415 of a person to see bids submitted to or by a governmental entity after bidding has closed;

416 (7) records that would identify real property or the appraisal or estimated value of real
417 or personal property, including intellectual property, under consideration for public acquisition
418 before any rights to the property are acquired unless:

419 (a) public interest in obtaining access to the information outweighs the governmental
420 entity's need to acquire the property on the best terms possible;

421 (b) the information has already been disclosed to persons not employed by or under a
422 duty of confidentiality to the entity;

423 (c) in the case of records that would identify property, potential sellers of the described
424 property have already learned of the governmental entity's plans to acquire the property;

425 (d) in the case of records that would identify the appraisal or estimated value of
426 property, the potential sellers have already learned of the governmental entity's estimated value
427 of the property; or

428 (e) the property under consideration for public acquisition is a single family residence
429 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
430 the property as required under Section 78-34-4.5;

431 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
432 compensated transaction of real or personal property including intellectual property, which, if
433 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
434 of the subject property, unless:

435 (a) the public interest in access outweighs the interests in restricting access, including
436 the governmental entity's interest in maximizing the financial benefit of the transaction; or

437 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
438 the value of the subject property have already been disclosed to persons not employed by or
439 under a duty of confidentiality to the entity;

440 (9) records created or maintained for civil, criminal, or administrative enforcement
441 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
442 release of the records:

443 (a) reasonably could be expected to interfere with investigations undertaken for
444 enforcement, discipline, licensing, certification, or registration purposes;

445 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
446 proceedings;

447 (c) would create a danger of depriving a person of a right to a fair trial or impartial
448 hearing;

449 (d) reasonably could be expected to disclose the identity of a source who is not
450 generally known outside of government and, in the case of a record compiled in the course of
451 an investigation, disclose information furnished by a source not generally known outside of
452 government if disclosure would compromise the source; or

453 (e) reasonably could be expected to disclose investigative or audit techniques,
454 procedures, policies, or orders not generally known outside of government if disclosure would
455 interfere with enforcement or audit efforts;

456 (10) records the disclosure of which would jeopardize the life or safety of an
457 individual;

458 (11) records the disclosure of which would jeopardize the security of governmental
459 property, governmental programs, or governmental recordkeeping systems from damage, theft,
460 or other appropriation or use contrary to law or public policy;

461 (12) records that, if disclosed, would jeopardize the security or safety of a correctional

462 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
463 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

464 (13) records that, if disclosed, would reveal recommendations made to the Board of
465 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
466 Board of Pardons and Parole, or the Department of Human Services that are based on the
467 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
468 jurisdiction;

469 (14) records and audit workpapers that identify audit, collection, and operational
470 procedures and methods used by the State Tax Commission, if disclosure would interfere with
471 audits or collections;

472 (15) records of a governmental audit agency relating to an ongoing or planned audit
473 until the final audit is released;

474 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
475 litigation that are not available under the rules of discovery;

476 (17) records disclosing an attorney's work product, including the mental impressions or
477 legal theories of an attorney or other representative of a governmental entity concerning
478 litigation;

479 (18) records of communications between a governmental entity and an attorney
480 representing, retained, or employed by the governmental entity if the communications would be
481 privileged as provided in Section 78-24-8;

482 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
483 from a member of the Legislature; and

484 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
485 legislative action or policy may not be classified as protected under this section; and

486 (b) (i) an internal communication that is part of the deliberative process in connection
487 with the preparation of legislation between:

488 (A) members of a legislative body;

489 (B) a member of a legislative body and a member of the legislative body's staff; or

490 (C) members of a legislative body's staff; and

491 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
492 legislative action or policy may not be classified as protected under this section;

493 (20) (a) records in the custody or control of the Office of Legislative Research and
494 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
495 legislation or contemplated course of action before the legislator has elected to support the
496 legislation or course of action, or made the legislation or course of action public; and

497 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
498 Office of Legislative Research and General Counsel is a public document unless a legislator
499 asks that the records requesting the legislation be maintained as protected records until such
500 time as the legislator elects to make the legislation or course of action public;

501 (21) research requests from legislators to the Office of Legislative Research and
502 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
503 in response to these requests;

504 (22) drafts, unless otherwise classified as public;

505 (23) records concerning a governmental entity's strategy about collective bargaining or
506 pending litigation;

507 (24) records of investigations of loss occurrences and analyses of loss occurrences that
508 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
509 Uninsured Employers' Fund, or similar divisions in other governmental entities;

510 (25) records, other than personnel evaluations, that contain a personal recommendation
511 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
512 personal privacy, or disclosure is not in the public interest;

513 (26) records that reveal the location of historic, prehistoric, paleontological, or
514 biological resources that if known would jeopardize the security of those resources or of
515 valuable historic, scientific, educational, or cultural information;

516 (27) records of independent state agencies if the disclosure of the records would
517 conflict with the fiduciary obligations of the agency;

518 (28) records of an institution within the state system of higher education defined in
519 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
520 retention decisions, and promotions, which could be properly discussed in a meeting closed in
521 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
522 the final decisions about tenure, appointments, retention, promotions, or those students
523 admitted, may not be classified as protected under this section;

524 (29) records of the governor's office, including budget recommendations, legislative
525 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
526 policies or contemplated courses of action before the governor has implemented or rejected
527 those policies or courses of action or made them public;

528 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
529 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
530 recommendations in these areas;

531 (31) records provided by the United States or by a government entity outside the state
532 that are given to the governmental entity with a requirement that they be managed as protected
533 records if the providing entity certifies that the record would not be subject to public disclosure
534 if retained by it;

535 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
536 except as provided in Section 52-4-206;

537 (33) records that would reveal the contents of settlement negotiations but not including
538 final settlements or empirical data to the extent that they are not otherwise exempt from
539 disclosure;

540 (34) memoranda prepared by staff and used in the decision-making process by an
541 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
542 other body charged by law with performing a quasi-judicial function;

543 (35) records that would reveal negotiations regarding assistance or incentives offered
544 by or requested from a governmental entity for the purpose of encouraging a person to expand
545 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
546 person or place the governmental entity at a competitive disadvantage, but this section may not
547 be used to restrict access to a record evidencing a final contract;

548 (36) materials to which access must be limited for purposes of securing or maintaining
549 the governmental entity's proprietary protection of intellectual property rights including patents,
550 copyrights, and trade secrets;

551 (37) the name of a donor or a prospective donor to a governmental entity, including an
552 institution within the state system of higher education defined in Section 53B-1-102, and other
553 information concerning the donation that could reasonably be expected to reveal the identity of
554 the donor, provided that:

- 555 (a) the donor requests anonymity in writing;
- 556 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
557 classified protected by the governmental entity under this Subsection (37); and
- 558 (c) except for an institution within the state system of higher education defined in
559 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
560 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
561 over the donor, a member of the donor's immediate family, or any entity owned or controlled
562 by the donor or the donor's immediate family;
- 563 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
564 73-18-13;
- 565 (39) a notification of workers' compensation insurance coverage described in Section
566 34A-2-205;
- 567 (40) (a) the following records of an institution within the state system of higher
568 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
569 or received by or on behalf of faculty, staff, employees, or students of the institution:
- 570 (i) unpublished lecture notes;
- 571 (ii) unpublished notes, data, and information:
- 572 (A) relating to research; and
- 573 (B) of:
- 574 (I) the institution within the state system of higher education defined in Section
575 53B-1-102; or
- 576 (II) a sponsor of sponsored research;
- 577 (iii) unpublished manuscripts;
- 578 (iv) creative works in process;
- 579 (v) scholarly correspondence; and
- 580 (vi) confidential information contained in research proposals;
- 581 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
582 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 583 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 584 (41) (a) records in the custody or control of the Office of Legislative Auditor General
585 that would reveal the name of a particular legislator who requests a legislative audit prior to the

586 date that audit is completed and made public; and

587 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
588 Office of the Legislative Auditor General is a public document unless the legislator asks that
589 the records in the custody or control of the Office of Legislative Auditor General that would
590 reveal the name of a particular legislator who requests a legislative audit be maintained as
591 protected records until the audit is completed and made public;

592 (42) records that provide detail as to the location of an explosive, including a map or
593 other document that indicates the location of:

594 (a) a production facility; or

595 (b) a magazine;

596 (43) information contained in the database described in Section 62A-3-311.1;

597 (44) information contained in the Management Information System and Licensing
598 Information System described in Title 62A, Chapter 4a, Child and Family Services;

599 (45) information regarding National Guard operations or activities in support of the
600 National Guard's federal mission;

601 (46) records provided by any [~~pawnbroker or pawnshop~~] pawn or secondhand business
602 to a law enforcement agency or to the central database in compliance with Title 13, Chapter
603 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

604 (47) information regarding food security, risk, and vulnerability assessments performed
605 by the Department of Agriculture and Food;

606 (48) except to the extent that the record is exempt from this chapter pursuant to Section
607 63-2-106, records related to an emergency plan or program prepared or maintained by the
608 Division of Emergency Services and Homeland Security the disclosure of which would
609 jeopardize:

610 (a) the safety of the general public; or

611 (b) the security of:

612 (i) governmental property;

613 (ii) governmental programs; or

614 (iii) the property of a private person who provides the Division of Emergency Services
615 and Homeland Security information;

616 (49) records of the Department of Agriculture and Food relating to the National

617 Animal Identification System or any other program that provides for the identification, tracing,
618 or control of livestock diseases, including any program established under Title 4, Chapter 24,
619 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
620 Quarantine;

621 (50) as provided in Section 26-39-109:

622 (a) information or records held by the Department of Health related to a complaint
623 regarding a child care program or residential child care which the department is unable to
624 substantiate; and

625 (b) information or records related to a complaint received by the Department of Health
626 from an anonymous complainant regarding a child care program or residential child care; and

627 (51) unless otherwise classified as public under Section 63-2-301 and except as
628 provided under Section 41-1a-116, an individual's home address, home telephone number, or
629 personal mobile phone number, if:

630 (a) the individual is required to provide the information in order to comply with a law,
631 ordinance, rule, or order of a government entity; and

632 (b) the subject of the record has a reasonable expectation that this information will be
633 kept confidential due to:

634 (i) the nature of the law, ordinance, rule, or order; and

635 (ii) the individual complying with the law, ordinance, rule, or order.

Legislative Review Note
as of 1-30-07 3:53 PM

Office of Legislative Research and General Counsel

H.B. 402 - Pawnshop Transaction Information Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require an appropriation of \$84,000 from the General Fund Restricted - Commerce Service Fund in FY 2008 to the Department of Commerce for staff and related costs necessary to implement provisions of this bill. This includes \$12,000 of one-time costs in FY 2008 for database enhancements. Spending from the Commerce Service Fund could affect revenue available to the General Fund over time.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
Commerce Service Fund	\$0	\$84,000	\$72,000	\$0	\$0	\$0
Total	\$0	\$84,000	\$72,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Local governments could see an increase in the number of cases generated by enforcement. Businesses will see some costs related to formatting information to be compatible with the central database repository. These costs will vary by business. There should be no direct impact on individuals.